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OUR VIEW

Family affairs

Gay marriage debate disappoints

Advocates on all sides assure us that the failure of the Senate, by a 50-48 margin, to get even a majority in favor of a constitutional amendment to ban gay marriage is not the end of the process but only the beginning. We suspect they are right, although we wish it were not so.

The presence of so much heat and so little light in the Senate this past week should give us all reason to regret the tendency to want to decide such personal, intimate issues through the political process. And while there are practical reasons, having to do with consultation during illness, property rights, inheritance and the like to want to continue to do so, it should raise the larger question of whether the government should be in the business of licensing marriage — which predates the modern state by several millennia at least.

The vote Wednesday, far from being a sober consideration of the grave issue of amending a basic document of governance, was a circus of partisan opportunism. President Bush, seeking to firm up his base of conservative support, made marriage between a man and a woman the topic of his radio address last week. Then the Democrats, having counted votes, agreed to a vote on one proposed amendment (several are floating around) but only one. That one failed. Both parties hope to use the issue to advantage in the November election.

The issue is rich with ironies. Conservatives (though not all of them), who as a general rule like to keep power at the most local possible level and resist tinkering with the nation's fundamental charter, seek a constitutional amendment to define a single national standard on marriage. Liberals, who have no qualms about interfering with freedom of association when it comes to the hiring practices of Boy Scouts or churches, want the state to bless the freedom of gay people to associate in marriage.

Thus we have an argument over which wrong way to regulate the most personal of relationships. Should it be done by legislatures or votes of the people, or by courts finding new rights?

How about none of the above? What is missing in the debate is the subtitle of Boston University law professor Randy Barnett's recent book, "Restoring the Lost Constitution — The Presumption of Liberty."

As University of Chicago law professor Richard Epstein put it in a recent Wall Street Journal article, "Constitutional libertarians hold that the state must always put forward some strong justification to limit the freedom of association of ordinary individuals." The state may intervene to protect people from harm, like assault or pollution, but not from actions seen as offensive but not unambiguously harmful.

A presumption of liberty would suggest that this delicate issue is best handled by the gradual, subtle interplay of voluntary decisions by free people. Most churches will probably decline to bless gay marriages, for example, but some might. Some homosexuals will want to call their relationship a marriage while others will not. Everybody else will be free to recognize such unions as valid or not. Men and women, meanwhile, will still be free to marry and raise children — or not — however this issue plays out.

The impulse to make every issue a political one, to be decided for everybody by a state institution, is needlessly divisive. Why not take a deep breath, let people make their own decisions and decide on an individual basis how to treat people who make troubling decisions?

Too confusing? Hardly more confusing than politicizing the personal.

owners, locations

The database takes on greater importance as federal livestock identification regulations are about to take effect in the next few years.

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service is "looking at implementing a process where in the event of an outbreak of disease that they can instantly trace where that animal has been and what that animal has been in contact with," said Bill Sauble, a Maxwell rancher who is one of nine members of the state Livestock Board.

The USDA is looking for a system that can track animals within 48 hours, Sauble said.

Some ranchers are concerned their longtime successpered with, Sauble said.

"They don't want to have to reinvent the wheel," he said. "That's where Loretta's process can probably help immediately.

"It would greatly benefit those states that have brand laws. Those states are very concerned about scrapping a system that worked for 100 years. They're very anxious to take whatever they've got and adapt it to a national identification system," Sauble said. "Loretta's technology holds a lot of promise for bridging that gap."

He explained that in New Mexico a brand is considered proof of ownership.

"Where a national identification system is headed is not necessarily proof of ownership," he said. "Loretta's system I see as helping bridge the two."